

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CREIGHTON TAKATA, Individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

RIOT BLOCKCHAIN, INC, *et al.*

Defendants.

Civil No. 3:18-CV-02293(GC)(RLS)

MOTION DATE: October 17, 2022

ORAL ARGUMENT REQUESTED

**DECLARATION OF DANIEL SCOTT CARLTON IN SUPPORT OF THE
RIOT DEFENDANTS' REPLY MEMORANDUMS IN SUPPORT OF
THEIR MOTIONS TO DISMISS THE CONSOLIDATED THIRD
AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS**

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Attorneys for Defendants
RIOT BLOCKCHAIN, INC., JOHN O'ROURKE, AND MICHAEL BEEGHLEY

DECLARATION OF DANIEL SCOTT CARLTON

I, Daniel Scott Carlton, declare and state as follows:

1. I am an attorney duly admitted to practice in the State of California and to appear before this Court *pro hac vice*. I am a partner at the firm of Paul Hastings LLP, counsel of record for Defendants Riot Blockchain, Inc. (“Riot”), John O’Rourke (“O’Rourke”), and Michael Beeghley (“Beeghley”) (O’Rourke and Beeghley are collectively referred to herein as the “Individual Defendants”) (Riot and the Individual Defendants are collectively referred to herein as the “Riot Defendants”) in the above-captioned matter. I make this declaration in support of the Reply Memorandum in Support of Riot’s Motion to Dismiss the Consolidated Third Amended Class Action Complaint for Violations of the Federal Securities Laws and in support of the Reply Memorandum in Support of the Individual Defendants’ Joinder and Motion to Dismiss the Consolidated Third Amended Class Action Complaint for Violations of the Federal Securities Laws. I have personal knowledge of the facts stated herein and, if called upon to testify under oath, I could and would testify competently thereto.

2. Attached hereto as Exhibit “A” are relevant excerpts from a true and correct copy of Riot’s April 30, 2018 Form 10-K/A, filed with the Securities and Exchange Commission (“SEC”).

3. Attached hereto as Exhibit “B” is a true and correct copy of Riot’s January 5, 2018 Form 8-K, filed with the SEC.

4. Attached hereto as Exhibit “C” are relevant excerpts from a true and correct copy of Barry Honig’s April 18, 2018 Schedule 13D/A, filed with the SEC.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration is executed on the 3rd day of October 2022, at Glendale, California.

/s/ Daniel Scott Carlton
Daniel Scott Carlton

EXHIBIT A

EXHIBIT A

10-K/A 1 riot_10ka-123117.htm FORM 10-K/A

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**FORM 10-K/A
(Amendment No. 1)**

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.**

For the fiscal year ended December 31, 2017

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.**

For the transition period from _____ to _____

Commission file number: 001-33675

RIOT BLOCKCHAIN, INC.

(Exact name of registrant as specified in charter)

Nevada

84-1553387

(State or other jurisdiction of incorporation or organization)

(IRS Employer Identification No.)

202 6th Street, Suite 401

Castle Rock, CO

80104

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code: **(303) 794-2000**

Securities registered under Section 12(b) of the Exchange Act:

Common Stock no par value per share

The NASDAQ Stock Market LLC

(Title of class)

(Name of each exchange on which registered)

Securities registered under Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known, seasoned issuer, as defined in Rule 405 of the Securities Act:

Yes ☐ No ☒

Indicate by check mark whether the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Exchange Act: Yes ☐ No ☒

Note - Checking the box above will not relieve any registrant required to file reports pursuant to Section 13 or 15(d) of the Exchange Act from their obligations under those Sections.

Indicate by check mark whether the registrant (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past twelve (12) months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☒ No ☐

Indicate by check mark if there is no disclosure of delinquent filers in response to Item 405 of Regulation S-K contained in this form, and no disclosure will be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☐
(Do not check if a smaller reporting
company)

Smaller reporting company ☒

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act):

Yes ☐ No ☒

As of June 30, 2017, the aggregate market value of the common stock, no par value, held by non-affiliates of the registrant, based on the closing sale price of the common stock, no par value per share was approximately \$21.9 million.

As of April 13, 2018, the registrant had 13,417,132 shares of common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None

RIOT BLOCKCHAIN, INC.
ANNUAL REPORT ON FORM 10-K/A
EXPLANATORY NOTE

This Amendment No. 1 to Form 10-K (the "Form 10-K/A") amends the Annual Report on Form 10-K for the fiscal year ended December 31, 2017 of Riot Blockchain, Inc. (the terms "we", "us", "our", the "Company", "Riot Blockchain, Inc." and "RIOT" mean Riot Blockchain, Inc. and its consolidated subsidiaries, unless otherwise indicated), originally filed on April 17, 2018 (the "Original Filing"). We are filing this Form 10-K/A to include the information required by Part III of Form 10-K that was not included in the Original Filing. Except as described above, no other changes have been made to the Original Filing. The Original Filing continues to speak as of the date filed.

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Outstanding Equity Awards at Fiscal Year End

The following table shows the outstanding equity awards held by the Named Executive Officers as of December 31, 2017:

Named Executive Officer	Option Awards					Stock Awards			
	Number of Securities Underlying Unexercised Options Exercisable (#)	Number of Securities Underlying Unexercised Options Unexercisable (#)	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Options (#)	Option Exercise Price (\$)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)	Number of Stock Options Held at Fiscal Year-End (#)	Number of Shares of Restricted Stock Held at Fiscal Year-End (#)
John R. O'Rourke (1)	100,000	-	-	10.00	11-2-2027	440,709	12,516,136	100,000	464,417
Jeffrey G. McGonegal (2)	-	-	-	-	-	22,858	649,167	-	25,000

(1) Includes options to purchase: 100,000 at \$10.00 per share granted on November 3, 2017 fully vested as of the date of grant. Also includes 35,000 restricted common shares awarded at a value of \$3.13, on February 3, 2017, vesting monthly at a rate of 1/24 of such shares per month, starting one month after the grant date, with 14,583 vested and issued as of December 31, 2017. Also includes 30,000 restricted common shares awarded at a value of \$3.51, on August 21, 2017, vesting monthly at a rate of 1/24 of such shares per month, starting one month after the grant date, with 5,000 vested and issued as of December 31, 2017. Also includes 75,000 restricted common shares awarded at a value of \$4.499, on September 27, 2017, vesting monthly at a rate of 1/24 of such shares per month, starting one month after the grant date, with 9,375 vested as of December 31, 2017. Also includes 344,000 restricted common shares awarded at a value of \$6.75, on November 3, 2017, vesting monthly at a rate of 1/24 of such shares per month, starting one month after the grant date, with 14,333 vested as of December 31, 2017.

(2) Includes 20,000 restricted common shares awarded at a value of \$4.08, on June 30, 2017, in connection with signing a retention agreement, vesting 100% on April 30, 2018, with none vested as of December 31, 2017. Also includes 5,000 restricted common shares awarded at a value of \$9.24, on October 11, 2017, vesting monthly at a rate of 1/7 of such shares per month, starting October 31, 2017, with 2,142 vested as of December 31, 2017.

Employment Agreements

The Company has entered into employment agreements with, and provides post-employment benefits to, its Named Executive Officers as follows:

John R. O'Rourke, Chief Executive Officer – On November 3, 2017, we entered into an employment agreement with Mr. O'Rourke to serve as Chief Executive Officer. The employment agreement with Mr. O'Rourke shall have an initial term of two years and provides for (i) a monthly salary of \$25,000, (ii) a restricted stock award of 344,000 shares of common stock which shall vest in 24 equal monthly installments beginning one month from the date of issuance and (iii) an option to purchase up to 100,000 shares of the Company's common stock, at an exercise price of \$10.00.

EXHIBIT B

EXHIBIT B

8-K 1 riot_8k-010518.htm FORM 8-K

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 8-K

CURRENT REPORT

**PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): January 4, 2018

Riot Blockchain, Inc.

(Exact name of Registrant as specified in its charter)

Nevada

(State or other jurisdiction of
incorporation or organization)

001-33675

(Commission File Number)

84-155337

(I.R.S. Employer Identification No.)

202 6th Street, Suite 401
Castle Rock, CO

(Address of principal executive offices)

80104

(Zip Code)

Registrant's telephone number, including area code:

(303) 545-5550

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b2 of the Securities Exchange Act of 1934 (§240.12b2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 4.01 Changes in Registrant's Certifying Accountant

(a) Dismissal of EisnerAmper LLP

On January 4, 2018, Riot Blockchain, Inc. (the "Registrant" or the "Company") dismissed EisnerAmper LLP ("EisnerAmper") as its independent registered public accounting firm.

The report of EisnerAmper on the Company's financial statements for the fiscal year ended December 31, 2016 did not contain any adverse opinion or disclaimer of opinion, nor was it qualified or modified as to audit scope or accounting principles. The report did include an explanatory paragraph relating to auditing the adjustments to the 2015 financial statements to retrospectively reflect the reverse stock split.

During the period of EisnerAmper's engagement as the Company's independent registered public accounting firm from February 3, 2017 through January 4, 2018 (the "Engagement Period"), there were no disagreements as defined in Item 304 of Regulation S-K with EisnerAmper on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of EisnerAmper, would have caused it to make reference in connection with any opinion to the subject matter of the disagreement. Further, during the Engagement Period, there were no reportable events (as defined in Item 304(a)(1)(v) of Regulation S-K).

In accordance with Item 304(a)(3) of Regulation S-K, we provided EisnerAmper with a copy of this Report prior to its filing with the SEC and requested EisnerAmper to furnish the Registrant with a letter addressed to the SEC, stating whether or not it agrees with the statements made by the Company herein in response to Item 304(a) of Regulation S-K as the same pertain to EisnerAmper and, if not, stating the respect in which it does not agree. A copy of EisnerAmper's letter confirming its agreement with the disclosures in this Item 401 is attached as Exhibit 16.1 to this Form 8-K.

(b) Engagement of MNP LLP

On January 5, 2018, the Company engaged MNP LLP ("MNP"), an independent registered public accounting firm which is registered with, and governed by the rules of, the Public Company Accounting Oversight Board, as our independent registered public accounting firm. During our two most recent fiscal years through December 31, 2016, and the subsequent interim period through January 4, 2018 neither us nor anyone on our behalf consulted MNP regarding either (1) the application of accounting principles to a specified transaction regarding us, either completed or proposed, or the type of audit opinion that might be rendered on our financial statements; or (2) any matter regarding us that was either the subject of a disagreement (as defined in Item 304(a)(1)(iv) of Regulation S-K and related instructions to Item 304 of Regulation S-K) or a reportable event (as defined in Item 304(a)(1)(v) of Regulation S-K).

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

16.1 Letter from EisnerAmper LLP, dated January 5, 2018.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Riot Blockchain, Inc.
(Registrant)

January 5, 2018

By: /s/ Jeffrey G. McGonegal

Name: Jeffrey G. McGonegal
Title: Chief Financial Officer

EXHIBIT C

EXHIBIT C

SC 13D/A 1 p18-1010sc13da.htm RIOT BLOCKCHAIN, INC.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13D/A

Under the Securities Exchange Act of 1934
(Amendment No. 7)*

Riot Blockchain, Inc.

(Name of Issuer)

Common Stock, no par value per share

(Title of Class of Securities)

767292105

(CUSIP Number)

Barry Honig
555 South Federal Highway #450
Boca Raton, FL 33432
(561) 307-2287

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

See Footnote 1

(Date of Event Which Requires Filing of This Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), Rule 13d-1(f) or Rule 13d-1(g), check the following box. []

(Page 1 of 9 Pages)

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

(1) This Amendment No. 7 is being filed to restate Amendment No. 6 filed with the Securities and Exchange Commission on February 13, 2018. The first date of event which required the filing of an amendment to the Schedule 13D after Amendment No. 5 was March 15, 2017.

Item 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER.

Item 6 of the Schedule 13D is hereby amended and supplemented by the addition of the following:

On March 15, 2017, the Issuer entered into separate securities purchase agreements (the "Note Purchase Agreements") pursuant to which it agreed to sell to the Reporting Person and a certain Hong Entity \$2,250,000 of principal amount of promissory notes (the "Notes") and three year warrants (the "March 2017 Warrants") to purchase up to 700,000 shares of Common Stock. The Notes are convertible into shares of Common Stock at an initial conversion price of \$2.50. Each March 2017 Warrant is exercisable into shares of Common Stock at an exercise price equal to \$3.56 per share (such sale and issuance of the Notes and March 2017 Warrants, the "Note Private Placement").

On March 16, 2017, the Issuer satisfied all closing conditions and closed the Note Private Placement.

The Notes and the March 2017 Warrants, as well as the proceeds from the sale therefrom, were placed in escrow pending the occurrence or non-occurrence of a Qualified Transaction (as defined in the governing purchase agreements). On August 18, 2017, the lead investor in the transaction waived the requirement for the occurrence of a Qualified Transaction and gross proceeds of the Note Private Placement were released to the Issuer and the Notes and the March 2017 Warrants were released to the Reporting Person and the applicable Honig Entity.

Under the terms of the Note Purchase Agreement, the Notes were automatically, and without any further action on the part of the investors, exchanged for shares of Series A Convertible Preferred Stock of the Issuer (the "Series A Preferred Shares"). The terms of the Series A Preferred Shares are set forth in the certificate of designations for such shares (the "Certificate of Designations of the Series A Preferred Shares"). As such, and pursuant to the Note Purchase Agreements, on September 20, 2017, the Issuer issued an aggregate of 7,071.74 Series A Preferred Shares, convertible into an aggregate of 707,174 shares of Common Stock, in exchange for the Notes issued in the Note Private Placement.

In connection with the Note Private Placement, the Issuer entered into a Registration Rights Agreement (the "March 2017 Registration Rights Agreement"), with the Reporting Person and the applicable Honig Entity which required the Issuer to file a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), to register the resale of the shares of Common Stock issuable upon (i) conversion of the Notes; (ii) exercise of the March 2017 Warrants and (iii) conversion of the Series A Preferred Shares.

The terms of the Note Purchase Agreement, the Notes, the March 2017 Warrant, the Certificate of Designations of the Series A Preferred Shares and the March 2017 Registration Rights Agreement are incorporated herein by reference to the texts of the agreements, which are filed as Exhibit 10.1, Exhibit 4.1, Exhibit 4.2, Exhibit 3.1 and Exhibit 10.2, respectively, of the Issuer's Current Report on Form 8-K filed by the Issuer with the SEC on March 17, 2017 (the "March 17, 2017 Form 8-K"). The Form of Note, the Form of March 2017 Warrant, the Certificate of Designations of the Series A Preferred Shares and the Form of March 2017 Registration Rights Agreement are referenced as Exhibit 1, Exhibit 2, Exhibit 3 and Exhibit 4, respectively, to this Amendment No. 7.

On November 1, 2017, the Issuer entered into a share exchange agreement (the "Exchange Agreement") with Kairos, the Reporting Person and the other shareholders of Kairos. On November 3, 2017, pursuant to the Exchange Agreement, the shareholders of Kairos, including the Reporting Person, exchanged all outstanding shares of Kairos' common stock for shares of Series B Convertible Preferred Stock of the Issuer (the "Series B Preferred Shares"). The Reporting Person received 151,210 Series B Preferred Shares pursuant to the Exchange Agreement. The terms of the Series B Preferred Shares are set forth in the certificate of designations for such shares (the "Certificate of Designations of the Series B Preferred Shares"). The terms of the Series B Preferred Shares are incorporated herein by reference to the text of such document, which is filed as Exhibit 3.1 to the Current Report on Form 8-K filed by the Issuer with the SEC on November 3, 2017 (the "November 3, 2017 Form 8-K"). The Certificate of Designations of the Series B Preferred Shares is referenced as Exhibit 5 to this Amendment No. 7.

On December 18, 2017, a Honig Entity entered into a securities purchase agreement (the "Securities Purchase Agreement") with the Issuer pursuant to which the Issuer issued 22,222 shares of Common Stock (the "Private Placement Shares") and warrants exercisable into 22,222 shares of Common Stock (the "December 2017 Warrants") to such Honig Entity for a purchase price of \$22.50 per combined Private Placement Share and December 2017 Warrant. The December 2017 Warrants have an exercise price of \$40.00 per share, subject to adjustment in certain events as set forth therein, and may be exercised from time to time at any time on or after June 21, 2018 through June 21, 2021.

The closing of the transactions contemplated by the Securities Purchase Agreement occurred on December 21, 2017.

CUSIP No. 767292105

SCHEDULE 13D/A

Page 8 of 9 Pages

SIGNATURES

After reasonable inquiry and to the best of his or its knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Date: April 18, 2018

/s/ Barry Honig
BARRY HONIG